

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

KENNETH ROBINSON

*
*
*
*
*

Criminal No. JFM-11-0521

Civil No. JFM-14-2968

MEMORANDUM

Kenneth Robinson has filed a motion for his release pursuant to Fed. Rule App. P. 23(c), (ECF No. 125), which the Government opposes, (ECF No. 126). Robinson's motion will be granted.


The Court retains jurisdiction to release Robinson while the appeal from its order granting writ of habeas corpus remains pending. Fed. R. App. P. 23(c); *Wolfe v. Clark*, 819 F. Supp. 2d 574, 579 (E.D. Va. 2011). In staying the August 18, 2016 Order granting a new trial (ECF No. 120), this Court did not opine on whether Robinson should be released or detained because that issue was not presented by the parties. Federal Rule of Appellate Procedure 23(c) provides a presumption of release from custody pending appeal when a petitioner has been granted habeas relief. Fed. R. App. P. 23(c); *Hilton v. Braunskill*, 481 U.S. 770, 774 (1987). While the Government may overcome Robinson's presumption of release by establishing the factors weighing in favor of a stay of release, it has not done so. *See O'Brien v. O'Laughlin*, 557 U.S. 1301 (2009).

Robinson's history of compliance with pre-trial release conditions, culminating in a determination that he could self-surrender to the Bureau of Prisons, mitigates in favor of release pending his new trial. Accordingly, the Court will order Robinson released subject to the pre-

U.S. DISTRICT COURT
DISTRICT OF MARYLAND
FILED
2016 OCT 20 PM 2:41
CLERK OF COURT
FREDERICK
FREDERICK

trial conditions set out by previous Order of the Court. (ECF No. 16). If those conditions of release need to be modified in any way, the parties should seek a modification hearing before a magistrate judge.

10/19/16



J. Frederick Motz
United States District Judge